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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

FILE:

SRC 02 108 51870

Office: TEXAS SERVICE CENTER

Date: APR 26 2004

IN RE:

Petitioner:
Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Malaysia, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not offered documentation evidencing that he and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *See* Decision of the Director, dated April 10, 2002.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

... shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation at section 214.2 does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2)

likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Immigration and Naturalization Service [now Citizenship and Immigration Services] on February 20, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 20, 2000 and ended on February 20, 2002.

In response to the director's request for additional evidence, the petitioner submitted a written statement, dated April 3, 2002. The statement indicates that the petitioner suffers from an injury to his lower back that prevents him from flying for prolonged periods of time. The petitioner further claims that he could not leave the United States during the required period as his mother is very ill and requires daily care. The petitioner submitted documents from physicians and therapists to support his assertions. *See* Letter from Anthony J. Bleyer, MD, MS, dated March 15, 2002. *See also* Patient Progress Report for Timothy Teague, dated March 11, 2002.

On appeal, the petitioner submits a letter, dated September 25, 2003. The letter states that the petitioner traveled to Malaysia in order to meet the beneficiary. The petitioner indicates that he visited Malaysia from April 24, 2002 until December 26, 2002. The petitioner also submits copies of boarding passes and a copy of a photograph of the petitioner and the beneficiary together.

The AAO notes that the evidence submitted on appeal seeks to establish that the petitioner and the beneficiary met during April 2002. Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between February 20, 2000 and February 20, 2002. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.